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5 JOHN C. HOM, JOHN C. HOM &  
6 ASSOCIATES, INC.,

7 Plaintiffs,

8 v.  
9 UNITED STATES OF AMERICA,

10 Defendant.

11 No. C 13-02243 WHA

12 **ORDER GRANTING  
MOTION TO DISMISS**

13 **INTRODUCTION**

14 In this action against the United States for unauthorized disclosures of plaintiffs' tax  
15 information, defendant moves to dismiss the complaint or alternatively moves for a more definite  
16 statement. To the extent stated below, defendant's motion to dismiss is **GRANTED**.

17 **STATEMENT**

18 Pro se plaintiffs John C. Hom and John C. Hom & Associates, Inc. filed this action  
19 for damages for violations of 26 U.S.C. 6103 in May 2013. Plaintiffs are seeking \$40,874,000  
20 in damages and "at least" \$500,000 in punitive damages (Dkt. No. 1 at 21–22). Defendant  
21 United States now moves to dismiss or alternatively moves for a more definite statement under  
22 FRCP 12(b)(6) (Dkt. No. 13).

23 Plaintiffs' complaint alleges that the IRS conducted an investigation of plaintiffs' tax  
24 returns. The IRS then opened a Foreign Bank Account Report ("FBAR") investigation under  
25 31 U.S.C. 5314 because it discovered Hom's online gambling activity and use of foreign bank

1 accounts (Dkt. No. 1 at 2). Plaintiffs allege that tax return information, discovered during the tax  
2 return investigation, was inappropriately disclosed for the purpose of the FBAR investigation.

3 **ANALYSIS**

4 Failure to state a claim is grounds for dismissal under FRCP 12(b)(6). “To survive a  
5 motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to  
6 ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
7 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). FRCP 8(a) requires  
8 “‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order  
9 to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’”  
10 *Twombly*, 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). At a minimum,  
11 a plaintiff must provide “the ‘grounds’ of his ‘entitle[ment] to relief’ [which] requires more  
12 than labels and conclusions, and a formulaic recitation of the elements of a cause of action.”  
13 *Ibid.* To ensure that pro se litigants do not lose their right to a hearing on the merits because  
14 of a technical procedural requirement, our court of appeals construes pro se pleadings liberally.  
15 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

16 **1. UNAUTHORIZED DISCLOSURE UNDER SECTION 6103.**

17 Plaintiffs are authorized to file this suit under 26 U.S.C. 7431. Plaintiffs argue that,  
18 under 26 U.S.C. 6103, the use of information discovered in the tax return investigation cannot be  
19 used for an FBAR investigation. Section 6103(a) states:

20 [r]eturns and return information shall be confidential, and except  
21 as authorized by this title —

22 (1) no officer or employee of the United States . . . shall  
23 disclose any return or return information obtained by him  
24 in any manner in connection with his services as such an  
employee or otherwise or under the provisions of this  
section . . . .

25 Defendant’s motion to dismiss argues that Section 6103(h)(1) provides an exception that  
26 allows such a disclosure:

27 [r]eturns and return information shall, without written request, be  
28 open to inspection by or disclosure to officers and employees of  
the Department of the Treasury whose official duties require such  
inspection or disclosure for tax administration purposes.

1           Tax administration is defined as “the administration, management, conduct, direction,  
2 and supervision of the execution and application of the internal revenue laws or related  
3 statutes . . . and includes assessment, collection, enforcement, litigation, publication, and  
4 statistical gathering functions under such laws, statutes, or conventions.” 26 U.S.C. 6103(b)(4).

5           Thus, the issue here is whether Section 5314 is either an internal revenue law or related  
6 statute (either designation would make the disclosure permissible). The United States argues  
7 that Section 5314 is a “related statute” under Section 6103 (Dkt. No. 13 at 6). This is correct.  
8 Congress intended for Section 5314 to fall under “tax administration.” *See STAFF OF JOINT  
9 COMM. ON TAXATION, 108TH CONG., GENERAL EXPLANATION OF THE TAX LEGISLATION  
10 ENACTED IN THE 108TH CONGRESS, 378 (Comm. Print 2005)* (“The Congress . . . believed  
11 that improving compliance with this reporting requirement is vitally important to sound tax  
12 administration . . .”). Section 5314 is therefore a related statute under Section 6103 and the  
13 disclosures at issue in this action were lawful.

14           Plaintiffs’ opposition argues that the IRS did not follow the proper procedure pursuant  
15 to the Internal Revenue Manual (“IRM”) Sections 4.26.17.2 and 4.26.14.2.2. The IRM states:  
16 “[w]ithout a related statute determination, Title 26 information cannot be used in the Title 31  
17 FBAR examination. Any such use could subject the persons making the disclosure to  
18 penalties for violating the disclosure provisions protecting Title 26 return information.”  
19 IRM 4.26.17.2(1)(G). Plaintiffs argue that defendant IRS failed to properly obtain a  
20 related statute determination because they did not follow the stated procedure for doing so.

21           Plaintiffs’ argument fails because the IRM holds no legal significance. Our court of  
22 appeals has held that “[t]he Internal Revenue Manual does not have the force of law and does not  
23 confer rights on taxpayers.” *Fargo v. Comm’r of Internal Revenue*, 447 F.3d 706, 713 (9th Cir.  
24 2006). Even assuming that the IRS did not follow its own procedures, plaintiffs have no claim  
25 for relief.

26           Plaintiffs also argue that the IRS reports contained false statements and that these false  
27 statements are “actionable” under Section 6103 of Title 26. In support of this argument,  
28 plaintiffs cite *Aloe Vera v. United States*, 699 F.3d 1153 (9th Cir. 2012). *Aloe Vera* is not

1 dispositive here because that decision analyzed the disclosure under Section 6103(k)(4), which  
2 exempts information that is authorized by treaty. *Id.* at 1163. The treaty in *Aloe Vera* authorized  
3 the disclosure of “pertinent” information. The court in *Aloe Vera* held that “knowingly false  
4 information” could not be pertinent under the treaty. *Id.* at 1163-64. *Aloe Vera* is irrelevant here  
5 because neither Section 6103(k)(4) nor the treaty are at issue.

6 Plaintiffs finally argue that the type of information the IRS was soliciting from them  
7 suggested that defendant’s purpose was “penalty assessment not tax administration” (Dkt. No. 1  
8 at 20). This distinction is meaningless for the purposes of Section 6103. Under Section 6103,  
9 the term “Tax administration . . . includes assessment, collection, enforcement . . .”

10 Even if by “penalty” plaintiffs mean that defendant IRS was acting maliciously and  
11 without merit, this argument fails as well. Plaintiffs have not alleged sufficient facts to support  
12 such an argument.

13 Defendant’s disclosures were lawful under Section 6103(h)(1) and the motion by the  
14 United States is therefore **GRANTED**.

15 **2. JOHN C. HOM & ASSOCIATES, INC. CANNOT PROCEED PRO SE.**

16 Plaintiffs were previously informed at the September 12 case management conference  
17 that a corporation cannot be a pro se litigant. Individual plaintiff cannot continue to  
18 represent plaintiff corporation by appealing to California Procedure Code Section 116.540(b).  
19 Section 116.540 pertains to small claims actions. This is not a small claims action and plaintiffs  
20 cannot make it one by asking that the corporation’s damages be limited to \$5000.

21 **CONCLUSION**

22 For the reasons set forth above, defendant’s motion to dismiss is **GRANTED**.  
23 Any amendment would be futile, so plaintiffs’ claims are **DISMISSED WITHOUT LEAVE TO**  
24 **AMEND**. Judgment will be entered by separate order.

25 **IT IS SO ORDERED.**

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27 Dated: September 30, 2013.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE